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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

EARVIN WILSON,

Defendant and Appellant.

E046856

(Super.Ct.No. BLF004636)

OPINION

APPEAL from the Superior Court of Riverside County. Robert W. Armstrong, Judge. (Retired judge of the Los Angeles Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lilia E. Garcia, and Elizabeth S. Voorhies, Deputy Attorneys General, for Plaintiff and Respondent.

Earvin Wilson, the defendant, challenges the sufficiency of the evidence to support his conviction for possession of a manufactured weapon by a prison inmate.

(Pen. Code,<sup>1</sup> § 4502, subd. (a).) Defendant's property, including a large collection of BIC pens, was x-rayed at Chuckawalla Valley Prison while defendant was being processed for transfer to another institution, and a sharpened bolt was discovered. Defendant was convicted by a jury and appeals. We affirm.

## BACKGROUND

Defendant was incarcerated at Chuckawalla Valley Prison. In August, 2007, Chuckawalla Valley Prison was closing one of its yards, so a high volume of inmate transfers were processed. On August 13, 2007, defendant reported to the Receiving and Release (R & R) Department in connection with his transfer to another institution. Defendant brought some legal papers, food, clothing, pens, pencils, writing materials, and other personal property for processing. Defendant pulled out all his nonexpendable personal property to list on the inventory, including a hobby craft box containing 50 or so pens.

The R & R officer, Officer Ledbetter, glanced through them, then sealed and packed them in a box, labeled with defendant's name, number, and the institution to which defendant was being transferred. The written inventory of defendant's possessions did not mention the hobby craft box. Nor was the box listed on defendant's "inmate property card" or any transfer list. Once the boxes were sealed and labeled, they were locked in a holding cell where there was no opportunity for anyone to tamper with them.

Then next morning, the boxes were x-rayed by Officer Adams. Adams had found

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

an inmate-manufactured weapon secreted inside a BIC pen in the box marked with defendant's name, containing numerous pens. The weapon was a round stock of metal, approximately 4 to 5 inches long, sharpened on one end, and hidden inside a BIC pen with two caps. When the machine alerted the officer to the presence of metal, Officer Adams stopped the machine, located the weapon, called his supervisor,<sup>2</sup> photographed the object, and entered it into evidence.

Defendant was charged with one count of unlawful possession of a manufactured weapon, specifically a seven-inch long threaded bolt sharpened at one end, by an inmate. (§ 4502, subd. (a).) It was further alleged that he had been previously convicted of a felony for which he had served a prison term (prison prior). The first jury trial ended with a hung jury and he was retried. The second jury convicted defendant of the substantive charge. Subsequently, defendant admitted the prison prior enhancement allegation, and requested immediate sentencing, waiving his right to a probation report. The court imposed a middle term sentence of three years for the weapon possession charge, and struck the prison prior enhancement. Defendant appealed.

## DISCUSSION

On appeal, defendant challenges the legal sufficiency of the evidence to support his conviction beyond a reasonable doubt. We disagree.

We begin by summarizing the applicable standard of review. In reviewing a sufficiency of evidence claim, our role is limited; we determine whether, on the entire

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<sup>2</sup> Officer Ledbetter was not the supervisor. Officer Adams indicated that the persons he notified were Sergeant Turnquist, his supervisor, and Lieutenant Riddle.

record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Smith* (2005) 37 Cal.4th 733, 738-739.) On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

To be substantial, evidence must be of ponderable legal significance, reasonable in nature, credible and of solid value. (*People v. Johnson* (1980) 26 Cal.3d 557, 576.)

While we must ensure that the evidence is reasonable, credible and of solid value, it is the exclusive province of the judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. (*People v. Smith, supra*, 37 Cal.4th at p. 739.) The uncorroborated testimony of a single witness is sufficient to support a conviction unless it is physically impossible or inherently improbable. (*People v. Duncan* (2008) 160 Cal.App.4th 1014, 1018.)

Where impeaching evidence in the nature of contradictions has been received, it is the trier of facts who must determine the extent to which the testimony is to be believed or disbelieved. (*Pierson v. Superior Court* (1970) 8 Cal.App.3d 510, 518 [it is for the jury to decide whether contradictory statements so far impeached the witnesses as to render their testimony improbable].) In other words, notwithstanding contradictions or impeachment, where the testimony is not inherently improbable, it is the exclusive province of the jury to determine the truth of the matter in question. (*People v. Langley* (1974) 41 Cal.App.3d 339, 347.)

The same standard applies to cases where the prosecution relies primarily on

circumstantial evidence. (*People v. Stanley* (1995) 10 Cal.4th 764, 792.) If the circumstances reasonably justify the jury's findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding. (*People v. Farnam* (2002) 28 Cal.4th 107, 143.) "Unless it is clearly shown that 'on no hypothesis whatever is there sufficient substantial evidence to support the verdict' the conviction will not be reversed. [Citation.]" (*People v. Quintero* (2006) 135 Cal.App.4th 1152, 1162.)

In the present case, defendant argues the conviction must be reversed, speculating that there was an opportunity for one inmate to "dump an unwanted piece of contraband on another inmate," despite testimony that no such opportunity was present after the boxes of defendant's property were sealed in his presence and locked in the holding cell. Defendant also speculates that perhaps one of the inmate porters was able to slip the weapon in defendant's box to get rid of it, despite the testimony of the correctional officers that the porters never had access to the boxes.

Defendant also argues that because the "hobby box" was not listed on the inventory of his property, or on the inmate property card, or on the transfer list, that Correctional Officer Ledbetter was mistaken in putting defendant's name on the wrong box. This ignores the correctional officer's testimony that defendant came in with his property, it was the defendant who pulled out his own nonexpendable personal property to be listed on the inventory, and all of the property was boxed and labeled in defendant's presence.

Defendant describes the inventorying of the inmates' property in connection with

the closure of the prison yard as “chaotic”, but nowhere in the record does this description find support. Defendant’s premise that chaos breeds mistakes and a mistake led to defendant’s arrest, creating a reasonable doubt as to his guilt. However, the standard on appeal is not whether there is a reasonable doubt as to guilt, but whether there is substantial evidence in support of the verdict. Defendant’s speculation as to what may have happened does not satisfy his burden of establishing that the evidence on which the conviction rests was insubstantial.

Instead, the record contains substantial evidence to support the conviction: defendant was present when the property items he brought in were inventoried, boxed, labeled with his name, sealed, and then locked in a holding cell. The next morning, an x-ray of the box revealed a homemade stabbing weapon concealed in one of the BIC pens that had been in defendant’s hobby craft box, which were put into one of the boxes in defendant’s presence, sealed and labeled. The evidence is sufficient to support the conviction.

#### DISPOSITION

The judgment is affirmed.

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s/Gaut  
J.

We concur:

s/Ramirez  
P. J.

s/King  
J.